



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2022-0112; FRL-9734-01-R1]

Air Plan Approval; New Hampshire; Rules for Particulate Emissions from Open Sources, Sand and Gravel and Related Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions of New Hampshire Code of Administrative Rules Chapters Env-A 1000 and Env-A 2800 submitted by the State of New Hampshire on January 8, 2020, and August 19, 2021, respectively. Env-A 1000 establishes requirements for open burning, fugitive dust, and firefighter instruction and training activities. Env-A 2800 sets particulate matter (PM), visible emissions (VE), and fugitive dust standards for sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2022-0112 at <https://www.regulations.gov>, or via email to maiti.pujarini@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www2.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Pujarini Maiti, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1625; maiti.pujarini@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On January 8, 2020, the New Hampshire Department of Environmental Services (NH DES) submitted a revision of New Hampshire Code of Administrative Rules Chapter Env-A

1000 (Prevention, Abatement, and Control of Open Source Air Pollution) to EPA for approval into the New Hampshire SIP. NH DES withdrew the January 8, 2020, submission of Env-A 1000 to the SIP on July 19, 2021. On August 19, 2021, NH DES submitted another revision of Env-A 1000 to EPA for approval into the New Hampshire SIP. This regulation establishes requirements for open burning, fugitive dust and firefighter instruction and training activities. NH DES submitted this revision to replace the current SIP-approved Env-A 1000 (83 FR 6972; February 16, 2018), which expired at the State level on May 1, 2019. The submittal also includes Appendices A and B, which provide references and definitions that are included in Env-A 1000.

On January 8, 2020, NH DES submitted a revision of New Hampshire Code of Administrative Rules Chapter Env-A 2800 (Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources) to EPA for approval into the New Hampshire SIP. Env-A 2800 sets standards for visible emissions (VE) and particulate matter (PM) emissions. It also sets fugitive-dust requirements for sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. NH DES submitted this revision to replace the current SIP-approved version of Env-A 2800 (81 FR 78052; October 1, 2010), which expired at the State level on October 1, 2018. The submittal also includes Appendix A, which provides a list of referenced State statutes and Federal regulations.

After reviewing New Hampshire's SIP submittals, EPA has concluded that the revisions to Env-A 1000 and to Env-A 2800 clarify and strengthen the current SIP-approved regulations and therefore EPA is proposing to approve these revised regulations into the New Hampshire SIP. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

II. EPA's Evaluation of New Hampshire's SIP Revisions

Env-A 1000 (Prevention, Abatement, and Control of Open Source Air Pollution) establishes requirements for open burning, fugitive dust and firefighter instruction and training activities. The proposed revisions to this rule, submitted to EPA on August 19, 2021, include clarifications and updates to certain provisions. The submittal also includes Appendices A and B, which provide references and definitions of terms used in Env-A 1000. The main proposed changes in the regulation and EPA's evaluation of these changes, are as follows.

The current SIP-approved version of Env-A 1001 authorizes open burning of untreated wood, campfire wood, brush, or charcoal in a campfire, outdoor grill, or outdoor fireplace for recreational purposes or for the preparation of food. The proposed revision to Env-A 1001 adds open burning of untreated pallets to this list. It also adds untreated pallets to the list of materials (untreated wood, campfire wood, or brush) that may be used as fuel for bonfires in conjunction with holiday or festive celebrations.

The current SIP-approved version of Env-A 1001 allows burning of brush or leaves by a landowner of a private, residential property, provided the material originates "on-site." The proposed revision to Env-A 1001 clarifies that originating "on-site" may include material that originates on another residential property but does not include material transported to the burning location for commercial purposes or by a commercial entity or its employees.

The current SIP-approved version of Env-A 1002 includes an exemption for leaf blowers from fugitive-dust regulations. The proposed revision to Env-A 1002 expands the exemption to include compressed air, but adds the limitation that, for commercial properties and public ways, this equipment can only be used for the purpose of blowing leaves and vegetation, and cannot be used to blow dirt, sand, or gravel except as incidental and necessary when blowing leaves and vegetation.

The current SIP-approved version of Env-A 1002 includes precautions to prevent, abate, and control fugitive dust. The proposed version of Env-A 1002 retains the previous precautions

and adds two additional allowed measures: (1) the construction of wind barriers to material stockpiles; and (2) construction of wind barriers and phasing of work to reduce disturbed surface area for sandblasting or similar operations.

EPA concludes that the proposed revisions to Env-A 1000 strengthen and clarify this regulation, and we agree that the addition of Appendices A and B provides relevant references and definitions for implementing Env-A 1000. Therefore, EPA is proposing to approve the submitted revision of Env-A 1000 into the New Hampshire SIP.

Env-A 2800

On January 8, 2020, NH DES submitted a revision of New Hampshire Code of Administrative Rules Chapter Env-A 2800 (Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources) to EPA for approval into the New Hampshire SIP. Env-A 2800 sets standards for visible emissions (VE) and particulate matter (PM) emissions. It also sets fugitive-dust requirements for sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources.

The current SIP-approved version of Env-A 2802 includes definitions of terms used in this regulation. The proposed revision to Env-A 2802 retains these definitions and adds the terms “Electronic means” and “Submit in writing” to the list of defined terms. These added terms bring the regulation up to date with the electronic reporting systems used by NH DES and EPA.

The current SIP-approved version of Env-A 2803 sets Compliance Testing Requirements for Non-Metallic Mineral Processing Plants. The proposed revision to Env-A 2803 retains the visible fugitive emissions or visible stack emissions standard of an average of 20 percent opacity for these plants, as determined by Env-A 807, for any continuous 6-minute period at crushers, transfer points, or screens. The proposed revision updates, but does not substantially change, the requirements for conducting compliance tests at affected facilities. As before, a successful compliance test must be conducted on the affected facility or specific affected equipment in

accordance with 40 CFR 60.675 within 60 days of achieving the maximum production rate at which the affected facility or affected equipment will be operated or 180 days after startup, whichever is sooner.

The current SIP-approved version of Env-A 2804 sets a VE standard for cement, ready mix concrete, and cement block sources. The proposed revision to Env-A 2804 retains the visible fugitive emissions or visible stack emissions standard of an average of 20 percent opacity for these sources, as determined by Env-A 807, for any continuous 6-minute period. EPA agrees that an average of 20 percent opacity is a reasonable VE limitation and concurs with retaining the standard.

The current SIP-approved version of Env-A 2805 establishes requirements for fugitive dust control for all sources and plants subject to this regulation. The proposed revision to Env-A 2805 retains these requirements without modification. EPA considers New Hampshire's fugitive dust control requirements to be reasonable and concurs with retaining the standard.

The current SIP-approved version of Env-A 2806 establishes Permit-By-Notification (PBN) procedures for non-metallic mineral processing plants. The proposed revision to Env-A 2806 updates these procedures to allow owners or operators to notify NH DES within 10 days after initial startup of an affected facility by electronic means as well as traditional hardcopy delivery methods.

EPA concurs with New Hampshire that the proposed revisions to Env-A 1000 and Env-A 2800 serve to strengthen and clarify these regulations and is, therefore, proposing to approve these revised regulations into the New Hampshire SIP. Furthermore, EPA agrees that the addition of Appendix A provides relevant references for implementing Env-A 2800. Therefore, EPA is proposing to approve the submitted revision of Env-A 2800 into the New Hampshire SIP.

III. Proposed Action

EPA is proposing to approve, and incorporate into the New Hampshire SIP, Env-A 1000 and Env-A 2800, which were submitted by the State of New Hampshire on August 19, 2021, and on January 8, 2020, respectively.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference into the New Hampshire SIP two New Hampshire Code of Administrative Rules: Env-A 1000 (Prevention, Abatement, and Control of Open Source Air Pollution), effective August 1, 2019, and Env-A 2800 (Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources), effective December 20, 2018.

The EPA has made, and will continue to make, these documents generally available electronically through <https://www.regulations.gov> and/or in hard copy at the appropriate EPA office.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 12, 2022.

David Cash,
Regional Administrator,
EPA Region 1.

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